

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network)	PS Docket No. 16-269
)	
)	
Implementing Public Safety Broadband Provisions Of the Middle Class Tax Relief and Job Creation Act of 2012)	PS Docket No. 12-94
)	
)	
Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	

REPLY COMMENTS OF THE FIRST RESPONDER NETWORK AUTHORITY

The First Responder Network Authority (“FirstNet”) respectfully submits these reply comments to the Federal Communications Commission (“Commission” or “FCC”) in response to the Report and Order and Notice of Proposed Rulemaking in the above-captioned proceeding.¹ On October 21, 2016, FirstNet submitted initial comments in response to the NPRM.² A range of other entities submitted comments, including comments from a number of states, which provided valuable perspectives on the implications for a state or territory (hereinafter “State”)

¹ *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network, Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012, Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, PS Docket Nos. Report and Order and Notice of Proposed Rulemaking, 16-269, 12-94, 06-229, 06-150 (rel. Aug. 26, 2016) (“NPRM”).

² Comments of the First Responder Network Authority, PS Docket Nos. Report and Order and Notice of Proposed Rulemaking, 16-269, 12-94, 06-229, 06-150 (filed Oct. 21, 2016) (FirstNet Comments), available at <https://ecfsapi.fcc.gov/file/102103296508/Comments%20of%20the%20First%20Responder%20Network%20Authority.pdf>. For convenience, and unless otherwise noted, all subsequent citations to “Comments” shall refer to pleadings filed in 16-269, 12-94, 06-229, 06-150.

that is considering whether or not to assume full responsibility for the Radio Access Network (“RAN”) within its borders (commonly known as “opt-out”).

In these reply comments, we address several of the issues raised in comments submitted by other parties. Sections I, II, and III below address the following three elements of the NPRM: (1) how far a State must progress to meet the statutory requirement to “develop and complete requests for proposals (RFPs)” within the 180 days required by the Middle Class Tax Relief and Job Creation Act of 2012 (“Act”);³ (2) FirstNet’s efforts to ensure that States receive the interoperability criteria and network policies as expeditiously as possible; and (3) whether an opt-out State should be permitted to file amendments and provide supplemental information after it has filed its alternative plan with the Commission. Section IV below addresses a matter raised by a commenter that is outside the scope of this proceeding.

I. The FCC Should Require A State Choosing to Conduct Its Own RAN Deployment to Have Awarded a Contract to a Vendor in Order for a State’s RFP to be Deemed “Complete” Within the 180 Days Required by the Act

Pursuant to the Act, upon providing notice of a State’s intent to opt-out, the State has 180 days to “develop and complete requests for proposals for the construction, maintenance, and operation of the [RAN] within the State.”⁴ The NPRM asks “[h]ow far must a state have progressed in the RFP process to meet this standard?”⁵ Several commenters argue that the Commission should not require an opt-out State to have awarded a contract to a vendor within this 180 day period.⁶ While FirstNet recognizes that it takes some effort by an opt-out State to

³ See Pub.L. No. 112-96, 126 Stat. 156 §§ 6001-6303, 6413 (codified at 47 U.S.C. §§ 1401-1443, 1457).

⁴ See 47 U.S.C. 1442(e)(3)(B).

⁵ NPRM ¶ 51.

⁶ See e.g., Comments of the State of Alabama at 6.

award a contract within the 180 days required by the Act, the FCC's interoperability determination cannot be based on a draft proposal. As FirstNet noted in its comments, it would be impossible for the Commission to ensure nationwide interoperability if an opt-out State has not yet awarded a contract to a vendor.⁷ Without an awarded contract in place, any number of material terms related to the draft proposals could change prior to final award. Neither the FCC nor FirstNet and its nationwide partner can rely on a draft plan, subject to potential unknown changes, to meet the interoperability requirements of the Act.

Moreover, a State's decision to opt-out of FirstNet's proposed State Plan comes with significant responsibility and risk. As noted by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), "[a] state that seeks to opt out commits itself to a painstaking endeavor. It must confront a rigorous double-agency approval process designed to ensure interoperability and long-term sustainability. Hiring additional personnel, issuing an RFP, procuring network equipment, negotiating covered leasing agreements, and collaborating with FirstNet to ensure seamless integration will each be substantial undertakings."⁸ Indeed, a State that chooses to submit an alternative plan has a responsibility not only to public safety within its State, but also to public safety in adjoining States and throughout the entire country. Accordingly, an opt-out State should not be permitted to submit a draft proposal, which by its very nature is incomplete, to the FCC and have it approved by the Commission with nothing more than a promise that the State and its vendor will work out the details at a later date.

II. FirstNet Will Deliver Its Network Policies and Interoperability Criteria to the States as Expeditiously as Possible

⁷ See FirstNet Comments at 6.

⁸ APCO Comments at 4.

Commenters generally agreed with the Commission's tentative conclusion that a State's alternative RAN plan must include a showing that the State will adhere to the FirstNet network policies that relate to interoperability with the NPSBN.⁹ Several of these commenters, however, suggested that the Commission set a deadline for FirstNet to provide its network policies and interoperability requirements to the ~~States~~FCC.¹⁰

FirstNet agrees with the Commission's tentative conclusion that the Act does not empower the FCC to impose network policies or interoperability requirements on FirstNet, including the establishment of deadlines for delivering these policies and requirements.¹¹ The Act mandates that FirstNet "take all actions necessary to ensure the building, deployment, and operation of the [NPSBN]."¹² In support of this charge, FirstNet is expressly tasked with establishing network policies, including policies related to the technical and operational requirements of the network, such as those related to interoperability with the NPSBN.¹³ As correctly noted by APCO, FirstNet is the sole entity tasked by the Act with establishing network policies, including those determining the scope of interoperability with the NPSBN.¹⁴ The Act does not provide a role for the Commission to establish timeframes for FirstNet to complete its network policies and interoperability criteria. Rather, the Commission's statutory role is limited to either approving or disapproving alternative RAN plans based on whether the plan

⁹ See e.g., Comments of the FirstNet Colorado Governing Body at 13.

¹⁰ See, e.g., Comments of the State of Nevada at 5.

¹¹ NPRM ¶ 70.

¹² 47 U.S.C. § 1426(b)(1).

¹³ See 47 U.S.C. § 1424(c)(1).

¹⁴ See Comments of APCO at 6.

demonstrates (1) compliance with the Interoperability Board Report and (2) interoperability with the NPSBN.¹⁵ Consequently, it is outside the scope of the Commission's authority to set a deadline or timeframe for FirstNet to complete its network policies, including those related to interoperability with the NPSBN.

FirstNet understands that States must have sufficient time to review FirstNet's network policies, particularly as they relate to interoperability, prior to submitting an alternative plan. As the Commission notes in the NPRM, FirstNet is developing an interoperability compliance matrix that will document the technical standards and network policies that will be needed to ensure interoperability of a State-deployed RAN with the NPSBN, as required by the Act.¹⁶ This compliance matrix will include key data elements to be leveraged by FirstNet's State and Federal partners to ensure that interoperability is achieved independent of who actually builds, deploys, and operates a RAN. FirstNet plans to finalize the details of the compliance matrix after it has developed a solution with its future network partner, which is a virtual necessity as the establishment of network policies is inevitably reliant, at least to a degree, upon the network architecture, infrastructure, equipment and other considerations related to FirstNet's future network partner. Accordingly, FirstNet will make every effort to ensure that States receive the network policies and interoperability compliance matrix as expeditiously as possible.

III. The FCC Should Not Permit States to File Amendments or Provide Supplemental Versions of an Alternative Plan

¹⁵ See 47 U.S.C. § 1442(e)(3)(C).

¹⁶ See Richard Reed, FirstNet Chief Customer Officer, *FirstNet Outlines Key Steps for Development of State Plans, Interoperability Requirements* (July 8, 2016), available at: <http://www.firstnet.gov/newsroom/blog/firstnet-outlines-key-steps-development-state-plans-interoperability-requirements>.

Several commenters urge the Commission to allow States to file amendments, provide supplemental information, and take corrective action prior to the Commission's decision to approve or disapprove an alternative RAN plan.¹⁷ In essence, this would give States multiple chances to develop and propose a plan that demonstrates compliance with the interoperability criteria established by the Interoperability Board and FirstNet, thereby delaying network implementation and frustrating Congress's intent to "speed deployment" of the nationwide public safety broadband network.¹⁸

FirstNet agrees with the comments of APCO that the FCC should not entertain amendments to or supplemental versions of an alternative RAN plan submitted by a State.¹⁹ The expeditious deployment of the network is critical to providing public safety officials throughout the country with needed (and overdue) interoperable communication capabilities to better serve and protect their respective communities, regardless of who has responsibility for the RAN in a given State. Any further delays – particularly those unconstrained – to network implementation nationwide as the result of an iterative alternative plan evaluation process that affords a State multiple shots to "get it right," by attempting to address and correct plan inadequacies, would compromise the timely deployment of the network in conflict with the statute's express mandates. Moreover, such a process would add uncertainty to network planning, deployment, and sustainability.

¹⁷ See, e.g., Comments of the Commonwealth of Pennsylvania at 6.

¹⁸ See, e.g., 47 U.S.C. § 1426(b)(1)(C) (describing the need for use of existing infrastructure to speed deployment of the network); see also, e.g., 47 U.S.C. § 1426(b)(3) (encouraging FirstNet to seek cost effective opportunities to speed deployment in rural areas).

¹⁹ See Comments of APCO at 6. FirstNet does not believe that minor, non-substantive errors in an alternative plan should result in the plan being disapproved by the Commission, thus, there does not appear to be a valid reason for a State to amend or provide a modification to its alternative plan after it has filed its plan with the Commission.

A State's decision to "opt-out" of FirstNet's proposed State Plan comes with significant responsibility and risk. For the sake of public safety personnel located both within and without the jurisdiction and the communities they serve, it is essential that a State making this decision does so armed with the necessary resources and fully committed to *expeditiously* developing a *comprehensive* alternative plan and moving through the statutorily mandated processes. As noted by APCO, "Congress clearly intended that if a state cannot provide a complete alternative plan within the statutory timeframe, it should not take on responsibility for the RAN."²⁰

IV. Any Decisions Related to a Core Network are Outside the Scope of this Proceeding

Southern Linc argues that the Commission "should not disqualify any state-administered RAN merely because it is associated with a core network."²¹ However, FirstNet, not the FCC, has exclusive control over decisions related to providing public safety services over the FirstNet core. Thus, Southern Linc's request is clearly outside the scope of this proceeding.

The Act charges FirstNet with the duty to "ensure the establishment of a nationwide, interoperable public safety broadband network...based on a single, national network architecture" and defines the architecture of the network as initially consisting of a "core network" and a "radio access network."²² In addition, FirstNet is required to take all actions necessary to ensure the building, deployment, and operation of the network, including issuing RFPs for the purposes of building, operating, and maintaining the network.²³ Thus, FirstNet is

²⁰ See Comments of APCO at 6.

²¹ Southern Linc Comments at 5.

²² 47 U.S.C. 1422.

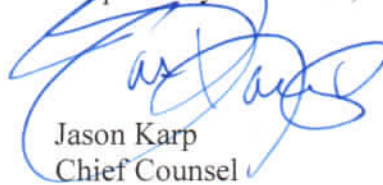
²³ See 47 U.S.C. 1426(b).

responsible for ensuring the core network and the RAN are built, deployed, and operated throughout the country.

Although the Act provides each State with an opportunity to choose to conduct its own deployment of a RAN within its borders, the Act does not provide for State deployment of a core network separate from the core network that FirstNet is charged with ensuring is deployed.²⁴ Rather, according to the express language of the Act, FirstNet is the only entity responsible for ensuring the construction of a core network. This interpretation is further supported by the mandate that States that choose to build their own RAN must pay any user fees associated with such State's use of "the core network."²⁵ Based on this language and the overall interoperability goals of the Act, FirstNet has already concluded that a State "choosing to conduct its own deployment of a [RAN]...must use the FirstNet core network to provide public safety services within the State."²⁶

We appreciate your consideration of these views.

Respectfully submitted,



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²⁴ See 47 U.S.C. 1422, 1426.

²⁵ U.S.C. 1442(f).

²⁶ See Final Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012, 80 Fed. Reg. 63,504, 63,524 (Oct. 20, 2015), <https://www.federalregister.gov/articles/2015/10/20/2015-26622/final-interpretations-of-parts-of-the-middle-class-tax-relief-and-job-creation-act-of-2012>.